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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,472	07/18/2006	Ruth Thomsen	P-8940-US	4215
49443	7590	04/06/2010	EXAMINER	
Pearl Cohen Zedek Latzer, LLP			FOREMAN, JONATHAN M	
1500 Broadway			ART UNIT	
12th Floor			PAPER NUMBER	
New York, NY 10036			3736	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/586,472	Applicant(s) THOMSEN ET AL.	
	Examiner JONATHAN ML FOREMAN	Art Unit 3736	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 6, 7 and 11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736

/J. M. F./
Examiner, Art Unit 3736

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claim 7 under 35 U.S.C. 112, second paragraph has been overcome .

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's argument that the moveable partition of Carlson et al. is not intended or designed for positioning an insect away from the subject after it has sucked blood in order to allow for convenient withdrawal of blood from the insect, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). It is noted that a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus that differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1947); In re Yanush, 477 F.2d 958, 177 USPQ705 (CCPA 1973); In re Finsterwalder, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); Ex parte Masham, 2 USPQ2d 1647 (BbPatApp & Inter 1987). The combination of Rasa et al. in view of Carlson et al. and Anderson, Jr. et al. disclose each of the claimed structural features. Applicant asserts that Rasa et al. in view of Carlson et al. and Anderson, Jr. et al. fail to disclose "the animal is held against the at least partially perforated common separating wall by the second movable partition so that the assassin bug can be positioned against the animal and can withdraw blood from the animal". However, the Examiner disagrees. Because the terminal wall (7) encloses the animal within the receptacle, it is considered by the Examiner to meet the limitation "the animal is held against the at least partially perforated common separating wall so that the assassin bug can be positioned against the animal and can withdraw blood from the animal". It is noted that without terminal wall (7), the animal would not remain in the receptacle and would not be positioned against the common separating wall. Applicant asserts that the word "against" is used to express that the animal must be pushed towards the common separating wall so that the assassin but is close enough and can actually withdraw blood from the animal. The wall of Anderson, Jr. et al. would perform this function. As an animal is pushed from the end of the chamber toward the front, the animal is being pushed towards the common separating wall positioned between the end and the front of the chamber. The Examiner maintains that the interpretation set forth above is a broad but reasonable interpretation. The claim does not require the second movable partition to reside in a plane parallel to the perforated common separating wall. Applicant asserts that the animal may be pushed outside of the area of potential contact. However, one having ordinary skill in the art would not push the animal outside of the area of potential contact, and would see the benefit in having a movable partition such as disclosed by Anderson et al. For instance, by having a movable partition the chamber holding the animal could be made smaller to increase the likeliness of the animal coming into contact with the separating wall.